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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 13th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 8 August 2001, at 4 p.m.

Chairperson: Mr. WEISSBRODT

later: Mr. OGURTSOV

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

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The meeting was called to order at 4 p.m.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued)
(E/CN.4/Sub.2/2001/10, 11 and Add.1, 12 and Add.1, 13, 14, 33; E/CN.4/Sub.2/2001/NGO/3, 11 and 17-22; E/CN.4/Sub.2/2001/CRP.1, E/CN.4/Sub.2/2001/WG.2/WP.1 and Add.1-3; E/CN.4/2001/51-54 and Add.1 and Corr.1; E/CN.4/2001/62/Add.2 and 148; E/CN.4/Sub.2/2000/12 and 13)

1. Mr. AHMAD (International Human Rights Association of American Minorities) drew the Sub-Commission's attention to the plight of the people of the divided and occupied territory of Jammu and Kashmir. Since 1954, that people had experienced war, exploitation, subjugation and political uncertainty. As a result of the denial of their right to self-determination, they had been deprived of their economic, social and cultural rights. Since the division of the State of Jammu and Kashmir in 1947, the identity of the Kashmiri people had not been recognized. It was because they were claiming that identity that the inhabitants of Jammu and Kashmir were fighting and being killed. The freedom struggle of the people of Kashmir was not, as was often claimed, a form of terrorism or religious fundamentalism, but, rather, an endeavour by that people to restore its dignity and honour and to determine its own future.

2. At the economic level, the State of Jammu and Kashmir, which had had a totally self-sustained economy based primarily on agriculture before 1947, was in a state of dependency and stagnation. Although it possessed abundant natural resources, it was unable to dispose of them freely, contrary to the provisions of article 1, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights. For example, the people of Jammu and Kashmir had not been consulted and their needs had not been taken into account at the time of the signing of the Indus Water Treaty between India and Pakistan in 1960.

3. In general, the rights and interests of the people of Jammu and Kashmir were being completely ignored, while the natural resources of the State were being exploited in the name of development. Thus, the Government of India was planning to implement hydroelectric projects with the collaboration of a number of multinational corporations based in Canada, Norway, Sweden and the United Kingdom, without offering any benefits to the people of Jammu and Kashmir.

4. Again, while the State had an installed generating capacity of 622 MW, the people of Kashmir often had electricity for only three hours a day because a large part of the power produced in Jammu and Kashmir was exported to India. Similarly, although there was no shortage of water in the country, the capital, Srinagar, which had a population of approximately 1.3 million, did not have enough drinking water.

5. In conclusion, he emphasized that the Kashmiri people wished freely to determine their own economic, social and cultural development, to have their own Government and to build a society in which all minorities were protected, the environment was safeguarded, languages and cultures were preserved and peace would emerge from the ruins of destruction.

6. Mr. BEKAROGLU (Society for Threatened Peoples), drawing the attention of the Sub-Commission to human rights violations in Turkey and to the ambiguous attitude of the European Court of Human Rights in that regard, said that the situation in his country was tending to deteriorate. Human rights defenders were being subjected to ever increasing pressures, legal and other obstacles to freedom of belief and freedom of expression remained and intolerance towards diversity of opinions and ideas was becoming more pronounced. Thus, 50 political parties had been banned in Turkey, including the Refah Party in 1998 and the Fazilet Party in June 2001, and a lawsuit had recently been brought against another party. There was no place for democracy in Turkey, where one sole ideology held sway.

7. The victims of those violations had appealed to the European Court of Human Rights. The founders of the Refah Party had sought justice from the Court, but the Court had decided that the banning of a political party was compatible with the European Charter of Human Rights and had recently ruled in favour of Turkey. That party had received 6 million votes and had been a partner in the governing coalition until the Government had, anti-democratically, decided to remove it. The Court's decision against a party that respected democracy and opposed all forms of violence and terror was unacceptable. The Court's objectivity could be called into question, and that in turn could dash the hopes of countries where democracy was under attack. If confidence in the European Charter of Human Rights was shaken, how were groups to be encouraged to fight for the rights and freedoms which all peoples should be entitled to claim?

8. He also drew attention to the problem of displaced persons in south-eastern Turkey, who needed help to return to their villages.

9. Ms. BORRELLY (Movement against Racism and for Friendship among Peoples), referring to the Declaration on the Right to Development and to the almost total lack of progress towards the realization of that right, pointed out that the subjects of the right to development were communities rather than individuals. The primary objective was to help countries which had suffered the harmful consequences of the economic development of other countries to emerge from their own underdevelopment.

10. Questioning whether the issue of poverty should be introduced in discussions on the right to development, she pointed out that international financial institutions, faced with the failure of structural adjustment programmes, had "taken over" the topic of poverty reduction, which had in effect become a new conditionality. Under another name, that was still the same logic, namely, the logic of the Washington Consensus, which consisted in ensuring debt repayment at any cost. Today, poverty was no longer an ideologically neutral subject. It would therefore be all the more regrettable if the United Nations were to follow in the footsteps of the World Bank and the IMF in the debate on poverty and development in the true sense of the word was left aside in favour of mere economic growth.

11. Mr. ALFONSO MARTINEZ noted that, as had been pointed out by Ms. Daes at the preceding meeting, it was absolutely impossible to work within the period of time allocated. That was why he had, despite his best efforts, not been able to read the report by Mr. Oloka-Onyango and Ms. Udagama in its entirety. He reserved the right to comment on it at a later stage.

12. Mr. OGURTSOV associated himself fully with the tributes paid to the authors of the report on globalization and was pleased to note that the Sub-Commission's work on the subject was progressing year by year. It was to be hoped that that work would make it possible to determine just what globalization was, since it was clear from the statements made that there were many different aspects to the question.

13. In his view, the effect of the globalization process was to open up the economies of States to an increasing degree and, while that might provoke conflicts of interest, it also stimulated development. Unfortunately, due to the polarization of the world economy, the main beneficiaries of such globalization were the economies of the industrialized countries, so that the gap between those countries and the rest of the developing world was constantly widening. In addition, as the globalization phenomenon picked up speed, the interdependence of national economies was strengthened, the world became increasingly uniform and the gap between rich and poor widened. It was thus clear that the globalization phenomenon had an impact on the enjoyment of economic, social and cultural rights.

14. It could be said that the world situation at the beginning of the twenty-first century was such that the question at issue was no longer the progress of humanity, but, rather, its survival. At present, it was therefore necessary to seek other, more civilized development models, which, far from destroying mankind's natural resources, would preserve and even restore them and ensure greater equality in income distribution.

15. As far as the latter point was concerned, it must unfortunately be admitted that one of the main challenges facing mankind today was how to reduce poverty. The enjoyment of good health, employment and access to education were fundamental rights recognized by States. That was why multilateral institutions such as the IMF and WTO must absolutely clarify their position on those rights, since the statements on that question that their representatives had made in the Sub-Commission were far from reassuring.

16. Mr. PARK commended Mr. Olaka-Onyango and Ms. Udagama on the excellent report which they had submitted and which was, in view of the breadth of the subject, a great success. He agreed with the way in which the two Special Rapporteurs had approached the problem and fully supported the recommendations they had formulated. The links between intellectual property rights and human rights warranted in-depth consideration. In that regard, reference should be made to article 15 of the International Covenant on Economic, Social and Cultural Rights, wnich provided a legal basis for such a study by declaring that States had an obligation to recognize and promote such rights. With regard to intellectual property rights, article 7 of the TRIPS Agreement had struck a balance between the interests of holders of intellectual property rights and the interests of users of property covered by those rights, but that balance had today been upset in favour of the holders. That might constitute an obstacle to full enjoyment of fundamental rights.

17. As suggested in the report, the question of how and on what basis the victims of globalization could request compensation should be studied in detail. From the legal viewpoint, he pointed out that, according to Article 103 of the Charter of the United Nations, in the event of

a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter would prevail. In that connection, although there were differences between certain provisions of the Agreement establishing WTO and the Preamble and Articles 55 and 56 of the Charter, there was no doubt that it was the provisions of the Charter that would prevail under all circumstances.

18. Following the statement by the representative of WTO, he had learned a great deal about WTO's mechanism for the settlement of disputes, but was still concerned about certain aspects of that mechanism.

19. He saw the statement by the IMF representative as the beginning of a fruitful dialogue with the Sub-Commission. He also supported Mr. Eide's suggestion that a constructive draft resolution should be formulated giving a full account of the debate, so that it could be continued at a later stage.

20. Ms. HAMPSON pointed out that certain States claimed that they would like to do more to promote health and education, for example, but were prevented from doing so. That claim had still to be verified. A State which really wanted to improve the situation in those areas needed to show that it had put its human rights obligations to the forefront in its relations with international financial institutions. It also needed to show that, in its relations with transnational corporations, it had sought to ensure the effective application of domestic laws designed to guarantee respect for human rights. States which were committed to such action made progress possible and they should therefore be encouraged and assisted. In that regard, the Committee on Economic, Social and Cultural Rights had developed certain useful approaches. For example, when a State had a seat in one of the governing bodies of the IMF, the Committee asked that State to indicate how its representative was briefed to ensure that he took account of the human rights commitments of that State, including its obligations in respect of aid to developing countries. Other approaches of that kind needed to be explored, not only in the context of that Committee, but also in the context of other treaty bodies.

21. The activities of business enterprises, whether national or transnational, had an obvious impact on human rights protection. Indeed, it was likely that more people were affected by national enterprises than by transnational corporations.

22. In her view, there was a danger that the first part of the report by the Special Rapporteurs might give the impression that the adverse impact of globalization on employment was felt only in the developing and least developed countries. It was true that the impact was more severe in the latter, particularly in those which had no social security. However, globalization also had serious repercussions in the developed world, particularly on unskilled and illegal workers. Acknowledging that impact might make it possible to build alliances between those with similar interests and to avoid discussing the matter exclusively in North-South terms.

23. Concerning TRIPS and intellectual property rights, particularly in the medical field, she disagreed with the comments made by the WTO representative, who had suggested that the TRIPS agreement was sufficiently flexible to meet the needs of all parties. In some cases, a

patent holder might recognize that it was in his interest to accept a compulsory licence, but that was true only in the case of countries with a large population. What was involved was a novel form of discrimination. Another question that arose was the question of the "things" over which patent rights were asserted and the present system's lack of encouragement for the development of medicines and treatments for illnesses found principally in developing countries. That problem, far from disappearing, was likely to be made worse by a system of incentives based on price differentials, since pharmaceutical laboratories would then have an incentive to produce the drugs and treatments which generated the greatest profits.

24. That situation showed that a problem of a legal nature existed with regard to patents. It was not because patents were an long-established human institution that they met the needs of the international community today, at least in the medical field. Other systems needed to be explored, such as in the case of the law of the sea, where the existing regime governing the exploitation of the resources of the seabed was based on the concept of the common heritage of mankind. Any company wishing to exploit those resources therefore had to submit two proposals, one designed to benefit the international community and the other designed to generate profits for the company in question. Another possibility would be to use the concept to which the Committee on Economic, Social and Cultural Rights had started to refer, namely, the concept of an international public good. Clearly, pharmaceutical laboratories had to recoup their research and development costs, but there was above all a need to ensure that those who needed medical treatment were able to benefit from it.

25. Lastly, concerning the question whether international financial institutions were legally bound by human rights law, it was important to remember that such institutions were composed of States. The question that arose was therefore how those States should fulfil their obligations in the field of international economic law when those obligations were in conflict with those of international human rights law. It was there that the concept of international peace and security became relevant. If, in fact, it was considered that the safeguarding of international peace and security was the primary obligation of States, as enshrined in the Charter of the United Nations, and that economic objectives could be achieved only in a stable political environment, it was clear that the IMF and other multilateral institutions should do nothing to prejudice that peace and security. The United Nations Secretary-General and the High Commissioner for Human Rights were only two voices among many which had recently emphasized the extent of the correlation between repeated human rights violations and threats to international peace and security. States needed to take that element into account and the same was true for international organizations. They were bound to respect human rights standards and to ensure that their activities did not result in human rights violations on the part of others. An analysis based on peace and security was therefore needed.

26. Mr. JOINET said that, as he understood it, an argument was developing over the language used by the IMF representative when he had stated that the IMF was not bound "in a strict sense" to promote human rights. He did not have the impression that that language had the implications that were being attributed to it. He would therefore like the IMF representative to clarify the matter.

27. Ms. WARZAZI, speaking on a point of procedure, said that the IMF representative would not be exercising a right of reply, but simply explaining what he had had in mind.

28. Mr. TAPLIN (International Monetary Fund) said that his organization was not legally bound to apply the various human rights declarations and conventions. But, even if, in a strict sense, the Fund did not have a mandate to promote human rights, it should take action, and indeed was taking action, in that field.

29. In reply to Mr. Eide, he said that his presence was proof that the Fund was open to dialogue. The staff of the Fund also tried to participate to the extent possible in the work of the various treaty bodies, to cooperate with independent experts and special rapporteurs and to respond as best they could to requests for information from the Commission on Human Rights. The meetings of the Administrative Committee on Coordination enabled the United Nations Secretary-General and the Director-General of the IMF to exchange views on matters of common interest.

30. He pointed out that the IMF representative who had participated in the day of general debate which the Committee on Economic, Social and Cultural Rights, had set aside at its twenty-fifth session for consultations with international financial institutions and development agencies was a lawyer.

31. The Fund was not simply a debt-recovery organization: it was far more than that. In fact, in accordance with its mandate, it ensured that the international monetary system was functioning properly and engaged in dialogue with member States on economic and financial questions.

32. The Fund had endeavoured to improve its structural adjustment programmes by refocusing them on poverty reduction. That strategy was fully in accordance with the objectives set by various United Nations conferences and by the Millennium Declaration.

33. Mr. Ogurtsov (Vice-Chairperson) took the Chair.

34. Mr. YIMER welcomed the action taken by the IMF to promote human rights, but disagreed with the idea that it was not legally required to take such action. Like all other international organizations, the Fund was bound by the human rights instruments to which its member States were parties.

35. Mr. EIDE pointed out that, unlike the IMF representative, the WTO representative had recognized that his organization was bound by the human rights instruments to which its member States were parties. While it was true that the promotion of human rights might not be explicitly included in the IMF's mandate, he was puzzled by the idea that it was not legally bound to respect the various human rights declarations and conventions. It was important to understand what was implied by that notion of rights and by the responsibility incumbent on States to ensure that those rights were realized in the economic, social and cultural fields. It was not simply a matter of creating favourable macro-economic conditions. He was not sure, for example, whether reducing the role of government authorities in economic activities enabled a State to fulfil its human rights obligations.

36. Mr. KARTASHKIN said he wondered whether Mr. Taplin's position was indeed that of the IMF and whether that position was explained by the fact that he was not a lawyer. He pointed out that there was a difference between declarations, which contained only recommendations, and conventions, which were binding on the States which were parties to them. It was true that the Fund did enjoy some autonomy, but it was bound to respect the purposes and principles of the Charter of the United Nations, which formed part of jus cogens. He was glad that the Fund was doing all it could to promote human rights and that a dialogue could be initiated on that basis.

37. Mr. JOINET said that he interpreted the statement by the IMF representative differently. As he saw it, the important phrase was "in a strict sense". The IMF was not a party to treaties, but it could, "in a wide sense", promote human rights, whether or not there was agreement on the way it was to do so. He regretted that personal attacks should have been made in the context of a debate which had been eagerly anticipated.

38. Mr. BENGOA welcomed the fact that dialogue had been initiated with international organizations whose policies had been decried in forums concerned with human rights. He was very interested in the IMF's new objective of poverty reduction and proposed that, in accordance with the mandate entrusted to it by the Commission on Human Rights, the Sub-Commission should make a closer study of the results of that policy and its impact on human rights. He would like the IMF to be able to participate in that study so that a dialogue could be established on the basis of shared experience.

39. Mr. Weissbrodt resumed the Chair.

40. Ms. MARCEAU (World Trade Organization) said that her organization was ready to continue its collaboration with the Sub-Commission. She pointed out that the member countries of WTO, and thus WTO itself, were bound by customary international law. All WTO did was to enact rules: it was then for the member States to ensure that their policies were in line with those rules.

41. Referring to paragraph 59 of the report on globalization (E/CN.4/Sub.2/2001/10), she recalled that the Organization's Appellate Body had ruled that WTO agreements could not be applied outside public international law. In the event of conflict, she suggested that distinctions should be drawn between legal provisions, guidelines and negotiating positions, since the solution in each case would be different.

42. Concerning the independence and impartiality of the judges sitting in special bodies dealing with the settlement of disputes, she pointed out that such judges were chosen from a list of candidates proposed by member States and that the three judges selected to settle a dispute had to be accepted by all parties. WTO's code of ethics allowed the parties to object not only to the judges, but also to members of the secretariat staff. Respect for human rights was not included in the judges' mandate and they could hand down rulings only on respect for WTO regulations.

43. Ms. WATAL (World Trade Organization), replying to Ms. Hampson, said that a compulsory licence was, by definition, issued without the authorization or consent of the patent holder. The TRIPS Council was examining several options for enabling countries which did not produce generic drugs to import them under certain conditions.

44. Mr. YOKOTA welcomed the dialogue that had been established with the representatives of the IMF, WTO and the World Bank and found the explanations given extremely useful. He nevertheless pointed out that the IMF representative had referred only to written international law, thus omitting customary international law. All treaties concluded by the IMF, whether with States or with international organizations, were also based on customary law, of which human rights were a part. Consequently, the IMF too had an obligation to respect human rights and should take care to ensure that, in its activities, it did not commit any violations or allow any of its member States to commit violations as a result of the conditions it imposed on them.

45. Mr. FAN Guoxiang said it was highly desirable that multilateral institutions should respect human rights, but it was not certain that they were legally obliged to do so. That was a question which the Commission on Human Rights could decide. In any event, he welcomed the constructive nature of the dialogue and would encourage multilateral institutions to make further efforts to promote human rights.

46. Ms. WARZAZI said she would like to know whether the IMF representative had in fact said that there was a gulf between civil and political rights and economic, social and cultural rights. If that was the case, she would point out it was nowadays agreed that all those rights were indivisible and interdependent and that, without development, respect for civil and political rights could not exist. Moreover, when the IMF had signed the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, the Universal Declaration of Human Rights had not yet been promulgated. However, in view of the fact that the specialized agencies were part of the United Nations system, were they not required to respect the Universal Declaration and the Charter? Might it not also be possible to change the modalities for implementing the 1947 Convention in order to reduce the IMF's autonomy and to bring human rights within its sphere of competence?

47. Ms. DAES said that she would like to do justice to WTO and the World Bank, whose representatives had actively and regularly participated in workshops on the protection of indigenous peoples. When views had diverged, those institutions had always provided explanations.

48. Mr. GUISSÉ, referring to the embargo against Iraq, pointed out that the embargo not only had not produced the results expected, but had caused intolerable suffering to the civilian population. The time had therefore come to appeal to the international community for those sanctions to be lifted. Similarly, the diamonds embargo imposed on Sierra Leone was not rational: it should be imposed on arms, not diamonds.

49. Mr. TAPLIN (International Monetary Fund) said the IMF did not sign treaties, but only agreements. Replying to Ms. Warzazi, he said he had referred to the gap between international economic law and international human rights standards, not to the gap between civil and political rights and economic, social and cultural rights.

50. Mr. YOKOTA said that, as he understood it, the IMF was a party to the Convention on the Privileges and Immunities of the Specialized Agencies. It had thus in fact acceded to an international treaty, contrary to what Mr. Taplin had said.

51. Mr. SFEIR-YOUNIS (World Bank) drew attention to the importance of the dialogue which had been established and assured the Sub-Commission that the World Bank was ready to continue the exchange of views. Since he had been posted to Geneva, he had, in accordance with his mandate, been present at all sessions of the Commission on Human Rights. The World Bank had also participated in sessions of the Committee on Economic, Social and Cultural Rights and in a large number of open-ended working groups including, for the past 19 years, working groups on indigenous peoples. In addition, it had organized a set of lectures on the right to development for officials of the Department of Legal Affairs with a view to integrating that concept in the Department's activities. The Bank was implementing a whole series of development initiatives and projects, 17 of which related to the justice system, the distribution of foodstuffs and the building of schools and health centres. It had also launched important programmes to benefit women, indigenous peoples, minorities and migrants. However, it should be emphasized that the Bank's role was not to force Governments to respect human rights, but to make sure that a body of legislation was in place and was applied. In that regard, it was prepared to give assistance to any State that asked for it, to the extent that human and financial resources were available. Generally speaking, it was not enough to ask States to ensure that structural adjustments did not make the situation of disadvantaged groups even more difficult: it was essential that political consensus should be reached on the matter.

52. He would need a clear message to transmit to the Bank, for, otherwise, it would have great difficulty in deciding on a way of integrating human rights into its policies.

53. Mr. JOINET said he had had occasion to carry out a World Bank mission to Timor to help in re-establishing the judicial system. He had been very surprised by the total freedom he had been allowed and by the impressive resources placed at his disposal. He had thus been able to see that there was enormous potential which deserved to be more widely known and made use of.

The meeting rose at 6.05 p.m.